

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT**

ENTERGY NUCLEAR VERMONT YANKEE, LLC  
and ENTERGY NUCLEAR OPERATIONS, INC.

Plaintiffs,

v.

PETER SHUMLIN, in his official capacity as  
GOVERNOR OF THE STATE OF VERMONT;  
WILLIAM H. SORRELL, as ATTORNEY GENERAL  
OF THE STATE OF VERMONT; and JAMES VOLZ,  
JOHN BURKE, and DAVID COEN, in their official  
capacities as members of THE VERMONT PUBLIC  
SERVICE BOARD

Defendants.

Civil Action No. 11-cv-99

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**THE STATE'S ANSWER TO THE COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

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*Attorneys for Defendants Peter Shumlin, in his official capacity as Governor of the State of Vermont, William H. Sorrell, as Attorney General of the State of Vermont, and James Volz, John Burke, and David Coen, in their official capacities as members of the Vermont Public Service Board*

The State answers Plaintiffs' Complaint for Declaratory and Injunctive Relief as follows:

Nature of Action

1. Admitted that the source cited in the last sentence of paragraph 1 speaks for itself. The State is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 1.
2. Admitted that on March 21, 2011, the United States Nuclear Regulatory Commission (NRC) issued a renewed facility operating license for the Vermont Yankee Station for a 20-year period and that the copy of the license attached as Exhibit A to the Complaint contains the language quoted in paragraph 2. Otherwise denied.
3. The allegations in paragraph 3 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: admitted that the Vermont Yankee Station is the only nuclear power plant in Vermont, that Vermont has the authority to grant or deny a certificate of public good (CPG) to any electricity generating facility located in Vermont, including the Vermont Yankee Station, and that, under Vermont law, without a CPG no electricity generating facility located in Vermont, including the Vermont Yankee Station, may continue to operate. Otherwise denied.
4. The allegations in paragraph 4 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: admitted that certain Vermont statutes authorize the Vermont Public Service Board (PSB) to grant or deny a CPG.
5. The allegations in paragraph 5 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: admitted that Vermont enacted 2006 Vt. Acts & Resolves No. 160 (Act 160), entitled "An Act Relating to a Certificate of Public Good for Extending the Operating License of a Nuclear Power Plant," which states, among other things, that "[i]t remains the policy of the state that a nuclear energy generating plant may be

operated in Vermont only with the explicit approval of the General Assembly expressed in law after full, open, and informed public deliberation and discussion with respect to pertinent factors, including the state's need for power, the economics and environmental impacts of long-term storage of nuclear waste, and choice of power sources among various alternatives." Otherwise denied.

6. The allegations in paragraph 6 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: denied.

7. The allegations in paragraph 7 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: denied.

8. The allegations in paragraph 8 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: the source cited in paragraph 8 speaks for itself. Otherwise denied.

9. The allegations in paragraph 9 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: admitted that the federal government has exclusive authority over the radiological safety of nuclear power plants, and that the source cited in paragraph 9 speaks for itself. Otherwise denied.

10. Denied.

11. The allegations in paragraph 11 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: the State is without knowledge or information sufficient to form a belief as to the truth of the allegations in the last sentence of paragraph 11. Otherwise denied.

12. The allegations in paragraph 12 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: denied.

13. The allegations in paragraph 13 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: admitted that this action is an attempt by Plaintiffs to obtain declaratory relief. Otherwise denied.

14. The allegations in paragraph 14 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: admitted that this action is an attempt by Plaintiffs to obtain declaratory relief. Otherwise denied.

15. The allegations in paragraph 15 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: admitted that this action is an attempt by Plaintiffs to obtain injunctive relief. Otherwise denied.

The Parties

16. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16.

17. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17.

18. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18.

19. Admitted that James Volz, John Burke, and David Coen are the current members of the PSB, which is an agency and court of record of the State of Vermont. The remaining allegations in paragraph 19 call for a legal conclusion; therefore no response is required and none is made. To the extent a response is required: admitted that the PSB's jurisdiction and responsibilities are set forth in its governing statutes and rules. Otherwise denied.

20. Admitted.

21. Admitted.

Jurisdiction and Venue

22. Admitted that Plaintiffs' complaint asserts a federal question for purposes of 42 U.S.C. § 1331. Otherwise denied.

23. Denied.

24. Denied; the proper venue for Plaintiffs' preemption claims is the PSB.

25. The allegations in paragraph 25 call for a legal conclusion; therefore no response is required and none is made.

26. The allegations in paragraph 26 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: denied.

Substantive Allegations

27. The allegations in paragraph 27 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: the sources cited in paragraph 27 speak for themselves.

28. The allegations in paragraph 28 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: the State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28.

29. The allegations in paragraph 29 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: the source cited in paragraph 29 speaks for itself. Otherwise denied.

30. The allegations in paragraph 30 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: the source cited in paragraph 30 speaks for itself. Otherwise denied.

31. The allegations in paragraph 31 call for a legal conclusion; therefore no response

is required and none is made. To the extent an answer is required: the source cited in paragraph 31 speaks for itself. Otherwise denied.

32. The allegations in paragraph 32 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: admitted that states may not regulate the radiological safety of nuclear power plants, and that the sources cited in paragraph 32 speak for themselves. Otherwise denied.

33. The allegations in paragraph 33 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: admitted that Vermont is not an “agreement state” with the NRC pursuant to section 274(b) of the Atomic Energy Act, and that the source cited in paragraph 33 speaks for itself. Otherwise denied.

34. The allegations in paragraph 34 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: the sources cited in paragraph 34 speak for themselves.

35. The allegations in paragraph 35 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: the State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35.

36. The allegations in paragraph 36 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: the State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36, and the source cited in paragraph 36 speaks for itself.

37. The allegations in paragraph 37 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: the sources cited in

paragraph 37 speak for themselves.

38. The allegations in paragraph 38 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: the sources cited in paragraph 38 speak for themselves.

39. The allegations in paragraph 39 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: the sources cited in paragraph 39 speak for themselves.

40. The allegations in paragraph 40 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: admitted that ISO New England (ISO-NE) is the Regional Transmission Organization serving Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, that ISO-NE's responsibilities include the three functions identified in paragraph 40, and that the sources cited in paragraph 40 speak for themselves. Otherwise denied.

41. The allegations in paragraph 41 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: denied.

42. The allegations in paragraph 42 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: the State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42.

43. Admitted that the Vermont Yankee Station is the "only nuclear power plant constructed or operated in the history of the State of Vermont." The State is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 43.

44. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44.

45. Admitted that the Vermont Yankee Station currently accounts for approximately one-third of the baseload power used by Vermont electricity consumers, that the Vermont Yankee Station provides power to out-of-state consumers, that the Vermont Yankee Station has received, among others and at various times, a color rating of green from the NRC, that the source cited in paragraph 45 speaks for itself, and that the Vermont Yankee Station had recently operated for 532 continuous days. The State is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 45. Otherwise denied.

46. Admitted.

47. The allegations in paragraph 47 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: admitted that the Vermont Yankee Station must receive authorization from the NRC, along with state authorization, in order to operate lawfully, that on March 21, 2011, the NRC granted Renewed Facility Operating License No. DPR-28, a copy of which is attached to the Complaint as Exhibit A, and that the sources cited in paragraph 47 speak for themselves. Otherwise denied.

48. The allegations in paragraph 48 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: denied.

49. Admitted that the Vermont Yankee Station's original NRC license extended to March 21, 2012, that ENVY and ENOI applied to the NRC for a license extension of 20 years, and that the source cited in paragraph 49 speaks for itself. The State is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 49.



50. The allegations in paragraph 50 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: admitted that on March 21, 2011, the NRC issued Renewed Facility Operating License No. DPR-28, a copy of which is attached to the Complaint as Exhibit A, and that the sources cited in paragraph 50 speak for themselves. Denied as to any implication that federal approval is the only approval necessary for the Vermont Yankee Station to operate beyond March 21, 2012, and otherwise denied.

51. Admitted.

52. Admitted that the PSB conducted proceedings related to the sale of the Vermont Yankee Station, and that the PSB record, including the June 13, 2002 Final Order, speaks for itself. Otherwise denied.

53. Admitted that ENVY, ENOI, VYNPC and its Vermont shareholders, and the Vermont Department of Public Service (DPS) negotiated and entered into a Memorandum of Understanding (MOU), and that the MOU speaks for itself. Otherwise denied.

54. Admitted that the MOU provided that the CPG issued to ENVY would authorize operation of the Vermont Yankee Station until March 21, 2012, and that the MOU speaks for itself. Otherwise denied.

55. Admitted that the MOU contains, among other things, the language quoted in paragraph 55, and that the MOU speaks for itself. Otherwise denied.

56. Denied.

57. Admitted that the PSB's September 18, 2001 Order in Docket No. 6270 contains, among other things, the language quoted in paragraph 57, and that the quoted Order speaks for itself. Otherwise denied.

58. Admitted.

59. The allegations in paragraph 59 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: denied.

60. Admitted that on June 21, 2005, Governor James Douglas signed 2005 Vt. Acts & Resolves No. 74 (Act 74), as codified at Vt. Stat. Ann. tit. 10, §§ 6521, 6522, and 6523, into law, and that Act 74 states, among other things, that “[c]ompliance with the provisions of this subchapter shall not confer any expectation or entitlement to continued operation of Vermont Yankee following the expiration of its current operating license on March 21, 2012. Before the owners of the generation facility may operate the generation facility beyond that date, they must first obtain a certificate of public good from the public service board under Title 30.” Vt. Stat. Ann. tit. 10, § 6522(c)(5). Otherwise denied.

61. Admitted that Act 74 states, among other things, that “[s]torage of spent fuel derived from the operation of Vermont Yankee after March 21, 2012 shall require the approval of the general assembly under this chapter,” Vt. Stat. Ann. tit. 10, § 6522(c)(4), and that ENOI is actively pursuing litigation against the United States Department of Energy to recover costs attributable to the storage of spent fuel at the Vermont Yankee Station. The State is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 61.

62. Admitted that on May 18, 2006, Governor James Douglas signed into law Act 160, as codified in part at Vt. Stat. Ann. tit. 30, § 248(e)(2). Otherwise denied.

63. Admitted.

64. Admitted that Vt. Stat. Ann. tit. 30, § 9 states that the PSB has “the powers of a court of record in the determination and adjudication of all matters over which it is given jurisdiction”; admitted that the PSB is a quasi-judicial board, that the PSB has substantial

expertise in the areas over which it has jurisdiction, and that its decisions must be supported by evidence and are subject to judicial review. Otherwise denied.

65. Denied.

66. Denied.

67. Admitted that Act 160 states, among other things, that “[t]he studies arranged by the department in consultation with the joint energy committee and the public engagement process, in general, shall: . . . identify, collect information on, and provide analysis of long-term environmental, economic, and public health issues, including issues relating to dry cask storage of nuclear waste and decommissioning options.” Vt. Stat. Ann. tit. 30, § 254(b)(2)(B). Otherwise denied.

68. Admitted that on March 3, 2008, ENVY and ENOI filed a petition for an amendment of their existing CPG to allow continued operation of the Vermont Yankee Station past March 21, 2012, and that the petition requested the PSB to set a timetable for proceedings to begin after July 1, 2008, and to inform the General Assembly of this request. Otherwise denied.

69. Admitted that on June 5, 2008, Governor James Douglas signed into law “Act 189, An Act Relating to a Comprehensive Vertical Audit and Reliability Assessment of the Vermont Yankee Nuclear Facility,” 2008 Vt. Acts & Resolves No. 189 (Act 189). Otherwise denied.

70. Admitted that Act 189 states, among other things, that “[i]t is the purpose of this act to provide for a thorough, independent, and public assessment of the reliability of the systems, structures, and components of the Entergy Nuclear Vermont Yankee facility.” Otherwise denied.

71. The allegations in paragraph 71 call for a legal conclusion; therefore no response

is required and none is made. To the extent an answer is required: admitted that Act 189 states, among other things, that “[t]he comprehensive reliability assessment shall include an in-depth inspection of at least the seven whole plant systems listed in this subsection,” Act 189 § 3(a), and that Act 189 speaks for itself. Otherwise denied.

72. Admitted that section 3 of Act 189 identifies the “specific systems to be assessed,” that section 4 of Act 189 lists “specific audit inquiries” to be included in the assessment of each system, and that Act 189 speaks for itself. Otherwise denied.

73. Admitted that section 9 of Act 189 states: “Notwithstanding the July 1, 2008 commencement date in 30 V.S.A. § 248(e)(2), added by No. 160 of the Acts of 2006, the Public Service Board may at any time after the passage of this act commence proceedings on any petition to operate a nuclear plant beyond the date permitted in its existing certificate of public good.” Otherwise denied.

74. Admitted that the PSB has conducted proceedings related to the relicensing of the Vermont Yankee Station, that DPS created a “Comprehensive Reliability Assessment” of the Vermont Yankee Station, and that the documents and testimony produced in the PSB’s relicensing proceedings and the “Comprehensive Reliability Assessment” speak for themselves. Otherwise denied.

75. Admitted.

76. Admitted that Governor Shumlin asked DPS to organize a “Reliability Oversight Committee,” that the stated reason at the time was to provide “additional expertise on oversight of Vermont Yankee issues within the state’s jurisdiction,” that the discovery of tritium leaks was mentioned among other things, and that the source cited speaks for itself. Otherwise denied.

77. Admitted that on January 7, 2010, ENVY and ENOI confirmed that an on-site

groundwater monitoring well contained detectable levels of tritium, a low-energy radionuclide that both occurs naturally in the environment and is a byproduct of nuclear power operations, that ENVY and ENOI notified the NRC and various Vermont agencies, and that ENVY and ENOI undertook the remediation efforts described in paragraph 77. Otherwise denied.

78. Admitted that the NRC and Vermont's State Nuclear Engineer determined that the tritium leakage had had no adverse effect on public health, safety, or the off-site environment, and that the source cited in paragraph 78 contains, among other things, the language quoted therein. Otherwise denied.

79. Admitted that on February 24, 2010, the Vermont Senate voted down Senate Bill No. 289, which—had it passed—would have permitted the PSB to consider whether to issue ENVY a CPG for operation of the Vermont Yankee Station after March 21, 2012. Otherwise denied.

80. Admitted that the source cited in paragraph 80 contains, among other things, the language quoted therein. Otherwise denied.

81. Admitted that the sources cited in paragraph 81 contain, among other things, the language quoted therein. Otherwise denied.

82. Denied.

83. The allegations in paragraph 83 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: denied.

84. Admitted that the sources cited in paragraph 84 contain, among other things, the language quoted therein. Otherwise denied.

85. Admitted that the source cited in paragraph 85 contains, among other things, the language quoted therein. Otherwise denied.

86. The allegations in paragraph 86 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: denied.

87. The allegations in paragraph 87 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: denied.

Claims for Relief

COUNT I

88. The State repeats and realleges its answers to paragraphs 1 through 87.

89. The allegations in paragraph 89 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: denied.

90. Denied.

91. Denied.

92. Admitted that the source cited in paragraph 92 contains, among other things, the language quoted therein. Otherwise denied.

93. Denied.

94. Denied.

95. The allegations in paragraph 95 call for a legal conclusion; therefore no response is required and none is made.

96. Admitted that Plaintiffs are seeking declaratory relief. Otherwise denied.

97. Admitted that Plaintiffs are seeking injunctive relief. Otherwise denied.

COUNT II

98. The State repeats and realleges its answers to paragraphs 1 through 97.

99. The allegations in paragraph 99 call for a legal conclusion; therefore no response is required and none is made. To the extent an answer is required: denied.

100. The allegations in paragraph 100 call for a legal conclusion; therefore no response

is required and none is made. To the extent an answer is required: the State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 100.

101. Admitted that the State of Vermont does not have authority to dictate the rates, terms, or conditions of interstate sales of wholesale power that fall within FERC's jurisdiction. Otherwise denied.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

106. The allegations in paragraph 106 call for a legal conclusion; therefore no response is required and none is made.

107. Admitted that Plaintiffs are seeking declaratory relief. Otherwise denied.

108. Admitted that Plaintiffs are seeking injunctive relief. Otherwise denied.

### COUNT III

109. The State repeats and realleges its answers to paragraphs 1 through 108.

110. Denied.

111. Denied.

112. Denied.

113. The allegations in paragraph 113 call for a legal conclusion; therefore no response is required and none is made.

114. Admitted that Plaintiffs are seeking declaratory relief. Otherwise denied.

115. Admitted that Plaintiffs are seeking injunctive relief. Otherwise denied.

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116. Except to the extent allegations in the complaint are specifically admitted, they are denied.

THE STATE'S AFFIRMATIVE DEFENSES

1. Failure to state a claim.
2. Lack of subject matter jurisdiction.
3. Mootness.
4. Lack of case or controversy.
5. Improper venue.
6. Breach of contract.
7. Breach of implied covenant of good faith and fair dealing.
8. Waiver.
9. Release.
10. Equitable estoppel.
11. Judicial estoppel.
12. Laches.
13. Unclean hands.
14. Collateral estoppel.
15. Res judicata.
16. Sovereign immunity.

Dated July 15, 2011, at Montpelier, Vermont.

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By: /s/ Scot L. Kline  
Scot L. Kline



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**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. The CM/ECF system will provide service of such filing via Notice of Electronic Filing (NEF) to the following NEF parties:

Robert B. Hemley, Esq.  
Matthew B. Byrne, Esq.

Kathleen M. Sullivan, Esq.  
Faith Gay, Esq.  
Robert Juman, Esq.  
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William B. Adams, Esq.

Dated: July 15, 2011

WILLIAM H. SORRELL  
ATTORNEY GENERAL

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